Supreme Court, U.S.
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In the

Supreme Court of the United States

TARA BROOKS, MARY STRIKLAND, EVIE CROSBY, REGINA FIELDS, JOHNNY SOLOMON, CHERYL WILSON, REVA PRICE, MICHAEL LYNCH, ESMERALDA LOPEZ, BRYAN TUBBS, CHRISTINE CLARK, CURTIS JEFFERS, JUANITA T. RANDLE, DIANE RANDLE, WILLIE B. RANDLE, JR., LAWRENCE TATE, and EARNEST LEE,

Petitioners,

v.

THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO,

Respondent.

On Petition for Writ of Certiorari to the Illinois Appellate Court, First Judicial District

PETITION FOR A WRIT OF CERTIORARI

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47 pp

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QUESTION PRESENTED

MAY AN ELECTION AUTHORITY DEVIATE FROM A STATUTORILY-PRESCRIBED FORMAT FOR PUBLIC POLICY QUESTIONS WHERE THE MINORITY SPANISH-LANGUAGE RENDITION OF THE PROPOSITION IS TREATED IN AN INFERIOR MANNER TO THE MAJORITY ENGLISH-LANGUAGE RENDITION, CAUSING A BIASED BALLOT TO VOTERS WHO SPEAK EITHER LANGUAGE.

PARTIES TO THE PROCEEDING

Petitioners are individuals who resided in and were registered to vote in the 28th and 34th Precincts of the 29th Ward, City of Chicago, and were at pertinent times legal voters in those precincts and Ward. Respondent, The Board of Election Commissioners of the City of Chicago (hereinafter generally the "Board") is the duly-appointed election authority which is the unit of local government solely responsible for the planning, management and conduct of all elections in the City of Chicago.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Tara Brooks, et al., respectfully petition for a writ of certiorari to review the judgment of the Illinois Appellate Court (First Judicial District) in the instant case.

OPINIONS BELOW

The Opinion of the Illinois Appellate Court was rendered on August 30, 2002. Petitioners filed a petition for rehearing, which was denied on November 1, 2002. Petitioners sought discretionary leave to appeal to the Illinois Supreme Court, which was denied on February 5, 2003.

JURISDICTION

The Opinion of the Illinois Appellate Court, issued on August 30, 2002 and yet unpublished (case No. 01-2283), affirmed the trial court's entry of summary judgment against petitioners and in favor of defendant-respondent Board of Election Commissioners of the City of Chicago. (A copy of the Appellate Court's Opinion is attached as Appendix A.) Petitioners filed a petition for rehearing, which was denied on November 1, 2002. (A copy of said denial of rehearing is attached hereto as Appendix B.) Petitioners sought discretionary leave to appeal to the Illinois Supreme Court, which was denied on February 5, 2003. (A copy of the order denying the petition for leave to appeal is attached hereto as Exhibit "C".) Jurisdiction of this Court is thus invoked under 28 U.S.C. sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C.A. sections 1973aa-1a(a) and (b) provide generally that citizens of language minorities have been excluded from effective participation in the election process

by various practices and procedures, and that among the ameliorative steps election authorities must take are the translation of voting materials into the language of certain minorities in certain elections.

The Illinois Election Code, 10 ILCS 5/23-24, regarding the contest of referenda Illinois, provides in pertinent part:

> "In the case of all . . . questions of public policy submitted to the voters of this State, and of all questions of public policy submitted to voters of any political subdivision or district, any 5 electors . . . may contest the results of said election by filing a written statement in the circuit court . . . in like form as in other cases of contested elections in the circuit court . . ."

Likewise, the Illinois Liquor Control Act, 235 ILCS 5/9-19, regarding the contest of a local option referendum on the sale of alcohol, provides in pertinent part:

> "Any 5 legal voters . . . may within 10 days after the canvass of the returns . . . contest the validity of such election . . . Any registered voter in the political subdivision or precinct in which the election has been held may appear in person, or by counsel, in any such contest to defend or oppose the validity of the election."

Paragraph 5/9-6 of the Illinois Liquor Control Act, entitled "*Form of proposition,*" provides in relevant part that: "*The proposition shall be in substantially the following form:*"

Shall the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) or (alcoholic liquor containing more than 4% of alcohol by weight in the original package and not for consumption on the premises) be prohibited in (or at) .....?	**YES**	
	NO	

STATEMENT OF FACTS

On November 7, 2000, the Board submitted the following form of ballot to the voters of the 28th Precinct of the 29th Ward:

414	SI **YES**	**"Shall the sale at retail of alcoholic liquor be prohibited in this 28th Precinct of the 29th Ward of the City of Chicago?" (as such precinct existed as of the last General Election)**
416	**NO** NO	"Debe la venta al detal de bebidas alcoholicas ser prohibida en este 28avo Recinto del 29avo Distrito de la Ciudad de Chicago?" (como tal recinto existia desde la ultima Eleccion General)

C.R. at 35, 53. (The record shall be referred to as "C.R.," as it was designated and referred to below, with reference to the appropriate page(s).)

The same proposition was presented to voters of the 28th precinct of the 29th Ward, with that 28th precinct referred to, as opposed to the 34th precinct. C.R. at 35, 53.

On November 27, 2000, two different sets of plaintiffs, consisting of legal voters of the 28th and 34th precincts of the 29th Ward of the City of Chicago, respectively, filed two different complaints. Each complaint generally alleged that the respective propositions failed to comply with the statutory format as provided for in the Illinois Liquor Control Act, and the Voting Rights Act, and each complaint requested that the circuit court hold that the local option elections at issue be invalidated. C.R. at 2-7 and 453-58. Given the similarity of the issues and facts, the cases were consolidated for purposes of summary judgment, and the cases were later consolidated on appeal to the First District of the Illinois Appellate Court. C.R. at 478.

The Board and plaintiffs each moved for summary judgment. In its motion for summary judgment, the Board asserted that it has used a punch card system for voting in Chicago precincts since the March, 1982, general primary election. This system calls for the insertion of a cardboard stock ballot card (containing either 312 or 456 punch positions) into a ballot book assembly which contains ballot label pages. These pages have the names and ballot position numbers of the candidates and the propositions in a given precinct. C.R. at 96. Since the March, 2000, primary, the Board has used a punch card containing 456 punch positions, to accommodate increasing numbers of offices and propositions. Id.

For referenda such as the local option propositions involved below, a ballot position number is assigned to a punch position, which enables a "Yes" vote to be cast favoring the proposition, and a separate ballot position number is assigned to a punch position enabling a "No" vote

to be cast. C.R. at 97. A stylus is used by the voter as a punching device to punch out the chads (perforated squares). As a voter turns the pages of the ballot book, different numbers are exposed on either the left or right side of the ballot label page. The votes are recorded on the ballot card, both horizontally and vertically, by punching a hole through the assigned ballot position on the ballot card. Id.

To accommodate requirements that the ballots and election materials be printed in English and Spanish, the Board has begun printing ballots which contain both language versions of the text. The first local option ballot using both languages was printed in 1992 on facing pages, with English and Spanish printed separately on each page, with common answers and punch positions in the center corresponding to the language each voter read. Later, the Board began printing both languages together on the same ballot page in all precincts. CR. At 97, 101-233. Prior to the instant cases, the Board received two complaints which challenged the form of the ballot for local option referenda used at the April 4, 1995, elections.

Plaintiffs supported their motion for summary judgment with the affidavit of attorney Michael E. Lavelle, formerly the Chairman of the Chicago Board of Election Commissioners, who averred that there was sufficient space available upon the November 7, 2000, ballot which would have allowed the Board to publish the English and Spanish versions of the propositions on separate and facing ballot pages, due to the fact that 38 punch-card positions were not used in the election. Lavelle further averred that the format presented to petitioners "differs significantly" from the statutory form prescribed by section 9-6 of the Liquor Control Act, in that, *inter alia*, two questions, one in English and one in Spanish, were presented in the same rectangular space. The English question was opposite the

"Si/Yes" position, and the Spanish question was opposite the "No/No" position, and the English language question (unlike the Spanish language question) was in bold-faced type. C.R. at 278-80.

At hearing upon the Motions to Dismiss, the parties stipulated that the local option ballot presented to the Plaintiffs on November 7, 2000, deviated from the strict compliance from the statutory form in the following ways:

- The text of the local option proposition, as well as the "Yes" and "No" choices, was printed in the Spanish language. [Tr. P. 38, L7-9].
- Punch position numbers 414 and 416 were added to the November 7, 2001 ballot, making it possible for voters to express their choice under the punch card system of voting [Tr. P. 38, L7-9].
- The "Yes" and "No" choices were to the left of the proposition text, instead of to the right. [Tr. P. 38, L7-9].
- English text was printed alongside the "Yes" choice. Spanish was not.

  [Tr. P.40, L 13-21].
- English text and choices were emboldened. Spanish was not. [Tr. P.40, L 13-21].
- English choices (but not proposition text) were printed on the ballot with larger type than Spanish [Tr. P.41, L 3-8].
- English choices were centered on the ballot at stylus holes. Spanish was not.

  [Tr. P.40, L 13-21].

- English and Spanish texts were printed inside the same rectangular ballot space

  [Tr. P.40, L 13-21].

Additionally, the parties stipulated that the following facts are true:

- On November 3, 1992, the local option had two separate and facing pages, with English on one page and the Spanish on the other, with common choices and arrows in the middle of each [Tr. P.41, L 17-21].
- Sufficient space existed on the November 7, 2000 ballot to allow the English and Spanish languages placement on separate pages [Tr. P.40, L 13-21].
- For purposes of determining the validity of this election, it is irrelevant whether the Plaintiffs had the opportunity to observe or correct the published ballot prior to November 7, 2000 [Tr. P.50]. For purposes of determining validity of this election, it is irrelevant whether the local option question on November 7, 2000 was approved or disapproved by a majority of the voters [Tr. P.51].

The trial court granted the Board's motion for summary judgment and denied petitioners' motion, finding that the ballot substantially conformed with the requirements of the Liquor Control Act and that the *"ballot provided a clear and meaningful choice to vote either for or against the proposition."* Id. at 70. On appeal, the Illinois Appellate Court held that the ballot in this case *"substantially complied with section 9-6 of the Liquor Control Act."* Appendix A at p. 8. Petitioners sought discretionary appeal to the Illinois Supreme Court; however the Illinois Supreme Court denied petitioners petition for leave to appeal on February 5, 2003. See Appendix C.

REASONS FOR GRANTING PETITION

1. THE TRIAL COURT ERRED IN GRANTING, AND THE APPELLATE COURT ERRED IN AFFIRMING, A SUMMARY JUDGMENT AGAINST PETITIONERS WHERE THE MANIPULATION OF THE BALLOT FORM VIOLATES THE VOTING RIGHTS ACT BECAUSE THE BIASED BALLOT DENIED A FAIR AND HONEST ELECTION FOR BOTH ENGLISH-SPEAKING AND MINORITY-LANGUAGE VOTERS.

The Voting Rights Act's (42 U.S.C.A. section 1973) purpose is to promote practical implementation of the fifteenth amendment, and to ensure that no citizen's right to vote is denied or abridged on account of race. *NAACP v. New York*, 413 U.S. 345, 93 S.Ct. 2591, 37 L.Ed.2d 648, 653-54 (1973). 42 U.S.C.A. section 1973aa-1a(a) and (b) provide generally that citizens of language minorities have been excluded from effective participation in the process by various practices and procedures, and that among the ameliorative steps election authorities must take are the translation of voting materials into certain minorities' languages in certain elections. With the Voting Rights Act, Congress intended to eradicate voting discrimination with all speed. *Chinese For Affirmative Action v. Leguenec,* 580 F.2d 1006, 1008 (9th Cir. 1978).

Here, the ballots inexcusably deviated from a simple but mandatory statutory form in a manner that discriminates against Spanish-speaking voters. The choices were on the left, as opposed to the right side of the ballot. The negative choices only were presented adjacent to the Spanish translation of the question, while the positive choices were alongside the English question. The Spanish portion was in lighter shade and smaller type than the English version. It is obvious that the proposition was slanted so as to encourage passage of the affirmative, and at the expense of the Spanish-speaking minority receiving meaningful and clear choice. While the Board may claim

it did not mean to treat the Spanish-speaking voter differently, good faith is not a defense. *Chinese for Affirmative Action, supra*. This Court should additionally address this blatant and unjustifiable discrimination in violation of the Voters' Rights Act.

The failure to comply with the Voting Rights Act which occurred in this case is likely to recur. Yet, it is a denial of rights which may escape likely review because of the small number of voters in a local option referendum, because the minorities intended to be protected do not sufficiently understand English to recognize that the election authorities are treating their referendum in an inferior way, and, likewise, because the English-speaking voters may not realize the biased ballot could skewer their vote. Alternatively, because a contest to the validity of the election must be filed within 10 days after results are officially published, there may not be sufficient time to complain and review the actions of the election authority.

2. BOTH THE FORM AND SUBSTANCE OF THE PROPOSITIONS AT ISSUE FAILED TO SUBSTANTIALLY COMPLY WITH THE ENABLING STATUTE, IN THAT THE BALLOT WAS BIASED IN FAVOR OF THE "YES" VOTE.

GENERAL AND SPECIAL STATUTORY LAW

10 ILCS 5/23-24 provides for the contest of propositions in Illinois, and provides in pertinent part:

> "In the case of all . . . questions of public policy submitted to the voters of this State, and of all questions of public policy submitted to voters of any political subdivision or district, any 5 electors . . . may contest the results of said election by filing a written statement in the circuit court . . . in like

> form as in other cases of contested elections in the circuit court . . ."

Likewise, the Illinois Liquor Control Act provides for the contest of a local option referendum on the sale of alcohol. 235 ILCS 5/9-19 provides in pertinent part:

> "Any 5 legal voters . . . may within 10 days after the canvass of the returns . . . contest the validity of such election . . . Any registered voter in the political subdivision or precinct in which the election has been held may appear in person, or by counsel, in any such contest to defend or oppose the validity of the election."

The trial court granted the Board's motion for summary judgment under 735 ILCS 5/2-1005. In *Rumford v. Countrywide Funding Corp.*, 287 Ill App. 3d 330, 678 N.E.2d 369 (1997), the court waxed explanatory with respect to the summary judgment procedure in Illinois. The court stated:

> "Summary judgment is properly granted if 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.' [Citation.] The purpose of summary judgment is not to try questions of fact, but to determine whether such questions exist. [Citation.] In determining whether a genuine issue of fact exists, the court must construe the evidence strictly against the movant . . . . Summary judgment will be granted only when the right of the moving party is clear and free of doubt." *Id.* at 334.

BODY OF ARGUMENT

The petitioners complaints in this case alleged, *inter alia*, that the propositions submitted to the voters failed to satisfactorily comply with the Illinois Liquor Control Act which provides for the forms of such propositions. According to Paragraph 5/9-6 of the Illinois Liquor Control Act, such propositions ***"shall be in substantially the following form"*** (emphasis added):

Shall the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) or (alcoholic liquor containing more than 4% of alcohol by weight in the original package and not for consumption on the premises) be prohibited in (or at) .....?	**YES**	
	NO	

Instead of complying with the form which the legislature prescribed, however, the Board designed and presented the local option referenda to the petitioning voters as follows:

414	SI **YES**	**"Shall the sale at retail of alcoholic liquor be prohibited in this 28th Precinct of the 29th Ward of the City of Chicago?" (as such precinct existed as of the last General Election)**
416	**NO** NO	"Debe la venta al detal de bebidas alcoholicas ser prohibida en este 28avo Recinto del 29avo Distrito de la Ciudad de Chicago?" (como tal recinto existia desde la ultima Eleccion General)

It is evident from a casual glance at the statutorily prescribed format and the format used in the precincts involved, that there are numerous differences between the proposition formats; indeed, these differences were stipulated to below. The deviations from the enabling statute include (but are not limited to): the choice portions (that is, "Yes" and "No" and "Si" and "No") of the propositions are at the left, as opposed to the right, of the propositions; the affirmative and negative choice portions are not each included alongside the proposition, but rather the affirmative choices are in one box along the English version of the proposition, while the negative choices are both in a box alongside the Spanish version of the proposition; and one language (English) is in bold print, in larger type, and centered along the stylus, while one language (Spanish) was not, and both languages were intermingled.

The Board argued, and the lower courts held, that despite these and other deviations, the form of the ballot substantially complied with the enabling statute. The

voters, not just of these affected precincts of the City of Chicago, but of the entire state of Illinois and the nation, need this Honorable Court to examine, and clearly set forth, the proper standards which define and govern substantial compliance with statutorily mandated ballot forms and where the Voting Rights Act is implicated.

In fact, a brief history of the Illinois courts pronouncements upon the issue reveal that the mandated substantial compliance is becoming less and less substantial. In *Howard v. Chicago and Eastern Illinois Railroad Co.*, 296 Ill. 246, 249-50 (1921), the Illinois Supreme Court stated with respect to substantial compliance with a prescribed statutory form of ballot:

> "The word substantial, as ordinarily used, means essential, material or fundamental. A substantial copy of the form of the ballot designated in the statute must evidently be one that contains the essence of the form in the statute—one giving the correct idea but not necessarily the exact expressions in the statutory form. The words of the statute, 'the ballots at said election shall be substantially in the following form,' necessarily convey the idea that the ballot to be used or voted by the voters is not required to be an accurate or exact copy but one which embodies or contains the substance or main features of the ballot found in the statute."

The ideas expressed in *Howard* proved sufficient to find statutory compliance for years. See, e.g., *Dick v. Roberts*, 8 Ill. 2d 215, 133 N.E.2d 305 (1956); *People ex rel. Davis v. C.B. & Q. R.R. Co.*, 48 Ill.2d 176, 268 N.E.2d 411 (1971). Additionally, in *Knappenberger v. Hughes*, 377 Ill. 126, 35 N.E.2d 317 (1941) the Illinois supreme court noted that the *raison d'etre* of underlying election cases which held elections invalid for lack of substantial compliance was that "the voter was not given as clear an alterna-

tive to vote for or against the proposition by the ballot used as he would have if the statute had been followed . . ."

In the case of *Hoogasian v. Regional Transportation Authority*, 58 Ill. 2d 112, 317 N.E.2d 534 (1974), however, the court "perhaps unwittingly" introduced a new concept. In reviewing the sufficiency of a ballot for a referendum election on the creation of a Rapid Transit Authority, it noted that in the context of that election, transportation authorities and mass-transit districts were not such obscure entities that "persons of ordinary intelligence" had no idea what they were. *Id.* at 125. However, this comment was really addressed not to substantial compliance with the statutory form, but rather to the assertion that the proposition itself was uninformative and meaningless so as to leave the voter bereft of what he or she was voting on. *Id.* at 124.

Illinois courts and the Board itself have seized on this concept of voter intelligence and are going too far with it. In *Havlik v. Marcin*, 132 Ill. App. 2d 532, 270 Ill. App. 3d 189 (1971), the appellate court in reviewing the statutory form of a local option referendum, observed that the words **"this precinct"** were known to **"every voter of intelligence."** 132 Ill. App. 2d at 537. Note that the intelligence level of the voter is not even confined by a qualifier as merely needing to be "ordinary." Voters now, it would appear, have to be intelligent people in order to have their rights of meaningful choice protected. The Board, likewise, in underlying briefing, argued that they need only satisfy this standard.

Requiring undefined "intelligence" of a voter is not a factor which is wisely employed in reviewing these cases. The concept is vague, means different things to different people, and being wholly subjective, leaves open the potential for inconsistent decisions. The potential exists that thousands, if not tens of thousands of voters, may be

disenfranchised in various referenda. The legislature presumably has considered such things as the intelligence of the voters, and enacted statutes which set forth the form to be employed. The Board is to substantially comply with this form, and the focus should not be upon intelligence, but should remain upon compliance.

Other courts have held that the failure to use a statutorily-prescribed form constitutes a violation of the mandatory provision of the liquor laws and renders an election voidable. See, e.g., *Moyer v. Kelley*, 93 S.W.2d 502 (Tex. App.). While minor irregularities in the conduct of a local option election will not vitiate the election (see e.g., *Wall v. Great Atlantic & Pacific Tea Co.*, 295 N.Y.S. 360, 162 Misc. 635), there must still be substantial compliance. *McCluney v. Stembridge*, 206 Ga. 321, 57 S.E.2d 203. This is in accord with the general election law pertaining to statutorily-prescribed formats of referenda, which requires compliance with the enabling statutes. See. C.J.S. Elections, sections 156, 170, 173.

The Illinois Appellate Court stated in *Krauss v. Board of Election Commissioners*, 287 Ill. App. 3d 981, 681 N.E.2d 514 (1997):

> "When a special statute dictates the form of the ballot, there must be substantial compliance with the special statutory mandate or the election is void. [Citation.]
>
> "Substantial compliance, rather than strict compliance, with this type of statutory ballot is sufficient. [Citation.]
>
> "Determination of substantial compliance is a question of law for the court. The test is whether the voter was given as clear an alternative as if the statutory form had been identically followed. [Citation.]

> "The focus is on the existence of a meaningful choice for the voters. A ballot is sufficient if the voter has a clear opportunity to express a choice either for or against it. [Citations.]
>
> "Thus, courts consider whether the deviation in the ballot was misleading or confusing to the voters. [Citation.]

Krause involved a similar format to that employed here in a local option case. There, like here, the local option ballot form also had the questions and the responses on the opposite sides of the Liquor Control Act's format, and there, too the affirmative responses were placed next to the English version of the proposition, with the negative forms placed next to the Spanish version. Because the *Krause* decision turned upon improper translation of the English into Spanish (287 Ill. App. 3d at 986-87), it did not reach the deviations in the format. However, *Krause* is supportive of the petitioners in the case sub judice, as the court noted that a need on the part of the Board to comply with the Voting Rights Act does not excuse a failure to follow the dictates of the enabling statute. 287 Ill. App. 3d at 987.

It is undisputed that in this case, the Board could have followed the statutory format in a manner more representative of the statutorily prescribed format. There was room to present the proposition and responses with separate boxes on separate pages, so that the most offensive deviations which occurred would have been avoided. The choices in the English and Spanish translations could have been adjacent to the same-language question. The bolder version of the English language in greater-sized type could (presumably) have thus been avoided. Curiously, the Board has never explained this manifestly pro-English bias to approval of the proposition by placing an emboldened, enlarged English question

next to the affirmative choices, with the English version only centered at stylus holes. Your petitioners submit that (contrary to the Illinois Appellate Court's characterization at Appendix A, p. 8), this obvious and unexplained bias in favor of the proposition's affirmative vote takes this matter to a challenge of not merely of deviations in form, but of substance, as well.

What the lower courts did know, in addition to the stipulated and obvious deviations, was that the format employed "significantly" differed from the statutory format. Given this evidence of record, and given the manifest deviations from the statutory format, the trial court erroneously concluded *as a matter of law*, that there was substantial compliance. Upon a full hearing, with testimony from qualified opinion witnesses and the testimony of affected voters and Board witnesses, whether the requisite level of compliance was achieved can be determined. Certainly a genuine issue of material facts exists upon the issue, given the record as it stands.

It is not just the voters in two precincts of a ward of the City of Chicago who need this Court to address this matter; all of the voters of the State of Illinois need protection from what amounts to an offensive lack of effort at compliance with enabling statutes' statutory formats of ballot propositions. Moreover, voters nationwide may need similar protection. The Board and other Boards, perhaps, need to have explained to it the importance of making every effort to substantially comply. This Court should tell the Hispanic or other Spanish speaking voters of this State that it is not acceptable to place their translations of propositions in lighter and smaller type, thereby building a bias into the result of the election. If ever this Court needed to reaffirm the integrity of the election process as it pertains to the conduct of referenda, the instant matter presents such a case.

CONCLUSION

The instant petition for leave to appeal involves a final judgment, as it pertains to a grant of summary judgment which disposed of the issues as to all parties. Important questions of compliance with the Voting Rights Act and of voters rights to fair and balanced formatting of referenda are involved. The issues which petitioners seek to raise, and which the lower courts swept under the rug, are of vital importance, since compliance with the legislature's prescribed ballot forms to avoid the potential disenfranchisement of substantial portions of the electorate goes to the very heart of an open and free society. Accordingly, petitioners respectfully request that this Honorable Court grant their petition for writ of certiorari, order the certified record below, allow the matter to be fully briefed herein, reverse the judgment of the lower court below, and grant whatever relief is just and appropriate.

Respectfully Submitted,

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Appendix A

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT,
COUNTY DIVISION

Tara Brooks, Mary Strikland, Evie Crosby, Regina Fields, Johnny Solomon, Cheryl Wilson, Reva Price, Michael Lynch, Esmeralda Lopez,	)	00 CE 038 34th Precinct of 29th Ward
Plaintiffs,	)	
vs.	)	
Board of Election Commissioners of the City of Chicago,	)	Consolidated Cases
Defendants.	)	
&	)	
Bryan Tubbs, Christine Clark, Curtis Jeffers, Juanita T. Randle, Diane Randle, Willie B. Randle Jr., Lawrence Tate, Earnest Lee,	)	00 CE 039 28th Precinct of of 29th Ward
Plaintiffs,	)	
vs.	)	
Board of Election Commissioners of the City of Chicago,	)	
Defendants.	)	

App. 2

Order

This matter coming before the Court on Plaintiffs' Motion for Summary Judgment and Defendant's Motion for Summary Judgment, and the court having considered the briefs and having heard oral arguments and being advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The form of the ballots used in the local option election conducted in the 28th and 34th precincts of the 29th Ward in the City of Chicago at the November 2, 2000 election substantially complied with the requirements of Section 9-6 of the Liquor Control Act and with the requirements of the Voting Right Language Assistance Act.

2. The form of the ballot used gave voters a clear and meaningful choice to vote for or against the local option proportions.

3. For these reasons and for the reasons stated in open court and on the record the Defendant's Motion for Summary Judgment is granted and summary judgment is hereby entered in favor of Defendants.

4. Plaintiffs' Motion for Summary Judgment is denied for the same reasons.

5. This is a final and appealable judgment and there is no just cause to delay enforcement or appeal.

CIRCUIT COURT OF COOK COUNTY
Entered MAY 31 2001
Judge Raymond L. Jagielski - 1598

Appendix B

FIFTH DIVISION
August 30, 2002

No. 1-01-2283

TARA BROOKS, MARY STRIKLAND, EVIE CROSBY, REGINA FIELDS, JOHNNY SOLOMON, CHERYL WILSON, REVA PRICE, MICHAEL LYNCH, ESMERALDA LOPEZ,BRYAN TUBBS, CHRISTINE CLARK, CURTIS JEFFERS, JUANITA T. RANDLE, DIANE RANDLE, WILLIE B. RANDLE JR., LAWRENCE TATE, EARNEST LEE,

Plaintiffs-Appellants,

v.

THE BOARD OF EDUCATION COMMISSIONERS OF THE CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County
Honorable Raymond Jagielski, Judge Presiding.

JUSTICE QUINN delivered the opinion of the court:

Two sets of plaintiffs, who included Tara Brooks, Mary Strikland, Evie Crosby, Regina Fields, Johnny Solomon, Cheryl Wilson, Reva Price, Michael Lynch, Esmeralda Lopez, Bryan Tubbs, Christine Clark, Curtis Jeffers, Juanita T. Randle, Diane Randle, Willie B. Randle, Jr., Lawrence Tate and Ernest Lee, each filed a complaint to contest the validity of a local option election conducted in the 28th and 34th precincts of the 29th ward of the City of Chicago. In the election, two propositions regarding whether the sale of retail alcoholic liquor should be prohib-

ited in the precincts were submitted to the voters. Plaintiffs' complaints, which were subsequently consolidated, alleged that the defendant, Board of Election Commissioners of the City of Chicago (the Board), submitted a ballot that was both "inherently vague and ambiguous" and "an illegal referendum and form of ballot." Following a hearing on the parties' cross-motions for summary judgment, the trial court granted defendant's motion for summary judgment and denied plaintiffs' motion. Plaintiffs now appeal.

On appeal, plaintiffs argue that the ballot: (1) fails to substantially comply with the Liquor Control Act of 1934 (235 ILCS 5/1-1 *et seq*. (West 1994); and (2) violates the Voting Rights Language Assistance Act of 1992 (42 U.S.C. §1973aa-1a(b)(1)(b)(2)(A)(i) (I) (1994)).

For the following reasons, we affirm.

I. BACKGROUND

On November 7, 2000, a local option election was held in the 28th and 34th precincts of the 29th ward in Chicago. The Board, in its capacity, caused two propositions to be submitted to the voters in that election which asked whether the retail sale of alcohol should be prohibited in those precincts.

The Board has utilized a punch card system of voting in all precincts in Chicago since 1982. Since the March 2000 primary election, the Board has used a punch card ballot containing 456 punch positions and corresponding numbers. The ballot card is inserted into a ballot book assembly containing ballot label pages with the names and ballot position numbers of each candidate, as well as any submitted propositions. For propositions, a ballot position number is assigned to a punch position enabling a "Yes" vote, while a separate ballot position number is assigned to a punch position enabling a "No" vote. The

voter uses a stylus as a punching device to punch out the perforated squares, known as "chads," which correspond to the assigned ballot numbers.

Section 9-6 of the Illinois Liquor Control Act of 1934 (Liquor Control Act) (235 ILCS 5/9-6 (West 1994)) specifies the format of local referenda on the retail sale of alcoholic liquor and provides that the proposition be in substantially the following form:

Shall the sale at retail of alcoholic liquor (or alcoholic liquor other than beer containing not more than 4% of alcohol by weight) or (alcoholic liquor containing more than 4% of alcohol by weight in the original package and not for consumption on the premises) be prohibited in (or at) .....?	**YES**	
	NO	

The form of the propositions on the ballot utilized in the November 7, 2000, local election looked roughly as follows:

414	SI **YES**	**"Shall the sale at retail of alcoholic liquor be prohibited in this 28th Precinct of the 29th Ward of the City of Chicago?" (as such precinct existed as of the last General Election)**
416	**NO** NO	"Debe la venta al detal de bebidas alcoholicas ser prohibida en este 28avo Recinto del 29avo Distrito de la Ciudad de Chicago?" (como tal recinto existia desde la ultima Eleccion General)

On November 27, 2000, two sets of plaintiffs, legal voters in the two named precincts of the 29th ward, filed complaints against the Board challenging the validity of the local option election. The complaints alleged that the Board's submitted ballot: (1) did not comply with the Liquor Control Act (235 ILCS 5/9-6 (West 1994)), and (2) in form, unequally affected two competing classes because it unjustly benefitted the proponents of the proposition and unjustly burdened the opponents in the manner of its design. The complaint included allegations that, unlike the statutory requirements:

> "a. The Board created an English and Spanish version of the same question inside one rectangular space; and,
>
> b. The Board created a form of proposition in paragraph 8 that allows for a "yes" choice exclusively alongside the English question and a "no" choice exclusively alongside the Spanish question; and,

c. The Board created a form of proposition in paragraph 8 that provides for a bold type of English question, with an enlarged yes for an affirmative answer, while the Spanish question and negative answers are not bolded or enlarged; and

d. The Board created a form of proposition in paragraph 8 that provides for voting spaces upon the left side of the proposition."

On May 16, 2001, the Board filed a motion for summary judgment. The Board asserted that the ballots submitted in the local option election substantially complied with the provisions of section 9-6 of the Liquor Control Act (235 ILCS 5/9-6 (West 1994)) and provided voters with a clear and meaningful choice either for or against the local option propositions. Both sets of plaintiffs then moved for summary judgment as well. In support of their motion for summary judgment, the plaintiffs attached the affidavit of Michael Lavelle, one of the plaintiffs' attorneys in this case, who averred that the vote results in the 28th and 34th precincts were in favor of the local option, therefore resulting in the prohibition of sale of alcohol in those precincts. On April 26, 2001, the complaints, which were virtually identical, were, by agreement, consolidated for the purposes of summary judgment.

On May 31, 2001, immediately prior to the hearing on the parties' cross-motions for summary judgment, the parties stipulated to a series of facts including:

- English text was only printed alongside the "Yes" choice. Spanish was not.

- English text and choices were printed on the ballot with bolder type than Spanish.

- English choices (but not proposition text) were printed on the ballot with larger type than Spanish.

— English and Spanish texts were printed inside one rectangular ballot space.

— On November 3, 1992, the local option had two separate and facing pages, with English on one page and the Spanish on the other, with common answers and arrows in the middle of each.

— Sufficient space existed on the November 7, 2000, ballot to allow the English and Spanish languages a separate page.

Following the hearing, the court granted the Board's motion for summary judgment. The court found:

> "[t]he ballot configuration as presented to the voters in the 28th and 34th precinct of the 29th ward at the general election held on November 7, 2000, does substantially conform to the required form, thus substantially conform to the required form as established by the Liquor Control Act. The court also finds that the ballot provided those voters with a clear and meaningful choice to vote either for or against said provision."

The court additionally found that the ballot complied with the requirements of the Voting Rights Language Assistance Act of 1992 (42 U.S.C. §1973aa-1a(b)(1)(b)(2)(A)(i)(I) (1994)) pursuant to which the Board is required to translate such propositions as the ones at issue in this case. The court denied plaintiffs' motion for summary judgment as well. Plaintiffs now appeal.

II. ANALYSIS

Plaintiffs first argue that the ballot submitted to the voters by the Board fails to substantially comply with section 9-6 of the Liquor Control Act (235 ILCS 5/9-6 (West 1994)). Specifically, plaintiffs maintain that deviations in

the ballot affected the voters' choice and rendered the ballot invalid. Plaintiff additionally argues that ballot equivalency and voter equality were not met in this case.

The procedural posture of the instant case is an appeal from a grant of summary judgment. The reviewing court applies a *de novo* standard of review to summary judgment orders. *Hagen v. Distributed Solutions, Inc.*, 328 Ill. App. 3d 132, 137 (2002). There is no disputed issue of material fact in the present case. "Where there is no genuine issue of material fact, the sole function of a reviewing court is to determine whether the trial court's judgment was correct as a matter of law." *Villarreal v. Village of Schaumburg*, 325 Ill. App. 3d 1157, 1160 (2001), citing *Cates v. Cates*, 156 Ill. 2d 76, 78 (1993). In addition, it is well established that statutory construction is a question of law to be decided by the reviewing court without deference to the judgment of the trial court. *Advincula v. United Blood Services*, 176 Ill. 2d 1, 12 (1996).

"When a special statute dictates the form of the ballot, there must be substantial compliance with the special statutory mandate or the election is void." *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d 981, 984 (1997), citing *Smith v. Calhoun Community Unit School District No. 40*, 16 Ill.2d 328, 332 (1959). Substantial compliance, rather than exact compliance, with this type of statutory ballot is sufficient. *People ex rel. Davis v. Chicago, Burlington & Quincy R.R. Co.*, 48 Ill. 2d 176, 182 (1971). To determine whether there has been substantial compliance, the test is whether the voter was given as clear an alternative as if the statutory form had been identically followed. *Dick v. Roberts*, 8 Ill. 2d 215, 221 (1956). "A ballot is sufficient if the voter has a clear opportunity to express a choice either for or against it." *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d at 984, citing *Hoogasian v. Regional Transportation Authority*, 58 Ill. 2d 117, 123 (1974). Therefore,

courts consider whether the deviation in the ballot was misleading or confusing to the voters. *Davis*, 48 Ill. 2d at 182.

In the case at bar, plaintiffs are not taking issue with the sufficiency of the substance of the proposition, but are arguing that the form of the proposition did not comply with section 9-6 of the Liquor Control Act (235 ILCS 5/9-6 (West 1996)). While plaintiffs refer to the Spanish translation of the proposition as "unintelligible foreign Spanish" at several points in their brief, they fail to point to any exact language that was improperly translated. There is no alleged deviation from the statutory language, therefore, the issue before us is whether the form of the proposition gave the voters a clear and understandable statement of the alternatives before them.

We hold that the ballot in this case substantially complied with section 9-6 of the Liquor Control Act (235 ILCS 5/9-6 (West 1994)). The ballot utilized in the November 7 election, as shown previously, offered the voter a "clear and understandable statement of the alternatives before him." *Havlik v. Marcin*, 132 Ill. App. 2d 532, 536 (1971).

The ballot at issue provided an English form of the statutory question whether the sale of retail alcoholic liquor should be prohibited in the precinct, as well as a translated Spanish form of the question. We will address plaintiffs' assertions with respect to each alteration complained of. First, plaintiffs take issue with the fact that both the English and Spanish versions of the question are in the same box. However, plaintiffs fail to explain why this form is objectionable or how it would confuse voters. In actuality, it would seem logical that the ballot's form of placing both versions in the same box, without a separating line, is less confusing to the voter because both versions present the identical question. The form of the ballot utilized in *Krauss v. Board of Election Commissioners of the City*

of Chicago, 287 Ill. App. 3d 981, had a line dividing the English and Spanish versions of the proposition. Although on appeal we did not reach the issue of whether that form complied with section 9-6, that version appears to be considerably more confusing than the ballot form utilized in the case at bar.

Second, plaintiffs' unsupported claim that because the English version happens to align directly with the "Yes" or "Si" choice, while the Spanish version aligns directly with the "No" or "No" choice, the voter is deceived is unpersuasive. The ballot employs substantially the same design as provided by the statute; the proposition in one box, and the possible responses to that proposition directly adjacent in separate boxes. We fail to see how voters are deceived by this ballot.

Third, to the left of that single box containing the question, there are two boxes, one box provides a "Yes" choice, translated in Spanish, and one box provides a "No" choice, translated in Spanish. Plaintiffs cannot take issue with the fact that the response boxes were placed to the left of the propositions, as opposed to the right of the propositions, because this design was necessary to accommodate a punch card system of voting.

Finally, plaintiffs appear to be asserting that the Board should have utilized two separate boxes, one for English and one for Spanish, on opposing pages with the arrows of each box pointing the voters to the same punch hole positions. Plaintiffs' sole support for that argument is that the Board has provided no reason why the ballot issue could not have been placed in two separate boxes on opposite pages. This argument is without merit where plaintiffs have cited no authority indicating that the Board has a responsibility to provide such a reason.

We do acknowledge, as did the trial court, that in the ballot the English version of the proposition was embold-

ened, while the Spanish version was not; and that the English version of the response was emboldened and larger than its unemboldened Spanish counterpart. We do not find, however, that this alteration results in rendering the ballot noncompliant. Plaintiffs fail to explain how, even if we were to assume, *arguendo* that, this ballot favors the English language over Spanish, a voter is deprived of an understandable choice between a yes or no response. Furthermore, as the trial court stated:

"The Liquor Control Act did not take into consideration the possibility of having the proposition translated into another language, for example, as provided by the legislature; however, the legislature did use the word 'substantial' in describing how a proposition should be provided to the voter. Thus the legislature realized that certain changes to their example may be necessary in preparing the ballot."

Illinois case law on the exact issue of the substantial compliance of ballot proposition form is sparse. This court, in *Krauss*, did hold that the voters stated a valid cause of action contesting the validity of ballots used in a local options election. *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d at 988. However, in *Krauss* we determined that the *substance* of the propositions did not substantially comply with section 9-6, and therefore, we did not address whether the *form* of the propositions complied with section 9-6. Similarly, both *Havlik v. Marcin*, 132 Ill. App. 2d 532, and *Love v. Marcin*, 47 Ill. App. 3d 715 (1977), cited by the Board, involved the substantial compliance of the contents of the substance of the propositions. In those cases, this court held that local option election ballots which described the affected area as "this precinct" gave voters a clear and understandable statement of alternatives and was in sufficient legal form. See *Havlik v. Marcin*, 132 Ill. App. 2d at 536; *Love v. Marcin*, 47 Ill. App. 3d at 718.

The Board asserts that there is no evidence in the record indicating actual voter confusion in this case. The Board argues that plaintiffs' passing reference to a Chicago Tribune article which discussed numerous problems with the November election, without any analysis, as proof of voter confusion is clearly insufficient. We reject the Board's argument. Neither the Liquor Control Act nor cases addressing the validity of a ballot proposition require a plaintiff to allege prejudice or actual voter confusion. *Krauss v. Board of Election Commissioners of the City of Chicago*, 287 Ill. App. 3d at 983. This is because challenges to the validity of an election question the basic legality of the election, not the outcome. *Ross v. Kozubowski*, 182 Ill. App. 3d 687, 694 (1989). Consequently, the failure of plaintiffs to allege or prove prejudice or actual voter confusion is not a basis to affirm summary judgment for the Board.

Based upon the present record, none of the plaintiffs' enumerated defects, even considered collectively, deprived the voters of a clear and meaningful choice to either vote for or against the proposition at issue in this case. In reviewing the proposition as stated on the ballot, the question uppermost in the mind of every voter would be whether or not the sale of alcoholic liquor should be prohibited in the precinct in which that voter lived and voted. As this court noted in *Behrman v. Whiteside School District No. 115*, 143 Ill. App. 3d 154, 159 (1986), " 'a literal compliance with prescribed forms [will] not be required if it appears that the spirit of the law has not been violated and the result of 'the election has been fairly ascertained. [citation.]' We agree with the Board that, while reasonable people may hold different opinions on how the ballot form and layout could be designed, there is nothing that obligates the Board to create a "perfect" ballot. The ballot need only "substantially comply" with the statutory ballot requirements. In this case, the ballot substantially complied with the statute

and "we see no reason to go beyond the statutory requirements, particularly since the question involves the control of the sale of liquor, an occupation not subject to the protection of due process under the constitution." *Love v. Marcin*, 47 Ill. App. 3d at 718.

Plaintiffs next argue that the ballot utilized in this case violates the Voting Rights Language Assistance Act of 1992 (42 U.S.C. §1973aa-1a (b)(1)(b)(2)(A)(i)(I) (1994)). The Voting Rights Language Assistance Act provides that "no covered State or political subdivision shall provide voting materials only in the English language" where "more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient."

However, while we acknowledge that the Voting Rights Language Assistance Act (the Act) requires that ballots be translated, the Act does not dictate the form of the ballot to be utilized. Plaintiffs appear to be arguing that the ballot design utilized by the Board was not required by the Act, and since there was "no legal authority to create or condone what occurred here," the Board's design violated the Act. That reasoning is illogical.

Plaintiffs' attempt to more clearly assert their argument in their reply brief by stating that the "Spanish language version is required by the Act but the Spanish version should be a separate question" fails to bring clarity to their argument. Plaintiffs first fail to point to any actual language of the provision in the Act that was violated. Plaintiffs fail to cite any authority for their argument that a violation of the Act occurred because this particular design was not required by law. Plaintiffs' argument here merely reiterates their previous argument that the ballot design utilized by the Board is "jumbled" and confusing. Plaintiffs' bare allegation that the Board is required to "enhance multi-culturalism" and cannot "design a configu-

ration with impunity if it works to confuse the language majority" will not suffice to establish a violation of the Act. Plaintiffs' claim that if the proposition dealt with a more important political issue, the ballot design at issue would not be permitted, also fails to lend any logical or legal support to their argument that this ballot is violative of the Act. Therefore, we hold that the Board did not violate the Voting Rights Language Assistance Act in submitting this ballot to the voters.

For the foregoing reasons, we affirm the decision of the trial court.

Affirmed.

CAMPBELL, P.J., and REID, J., concur.

Appendix C

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

No. 1-01-2283

TARA BROOKS, MARY STRIKLAND, EVIE CROSBY, REGINA FIELDS, JOHNNY SOLOMON, CHERYL WILSON, REVA PRICE, MICHAEL LYNCH, ESMERALDA LOPEZ,

Plaintiffs-Appellants,

and

BRYAN TUBBS, CHRISTINE CLARK, CURTIS JEFFERS, JUANITA T. RANDLE, DIANE RANDLE, WILLIE B. RANDLE JR., LAWRENCE TATE, EARNEST LEE,

Plaintiffs-Appellants,

vs.

THE BOARD OF EDUCATION COMMISSIONERS OF THE CITY OF CHICAGO,

Defendant-Appellee.

ORDER

This cause coming to be heard on the Petition for Rehearing of the Plaintiffs-Appellants' and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the Petition for Rehearing is DENIED.

/s/ Patrick J. Quinn
Patrick J. Quinn, Justice

/s/ P.J. Campbell
P.J. Campbell, Justice

/s/ J. Reid
J. Reid, Justice

Order entered Nov. 01, 2002
Appellate Court, First District

Appendix D

SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

February 5, 2003

No. 95325—Tara Brooks et al., petitioners, v. The Board of Election Commissioners of the City of Chicago, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on February 27, 2003.